

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
APPEAL NO.744 OF 2007
IN
NOTICE OF MOTION NO.3871 OF 2007
IN
SUIT NO.2889 OF 2007

Prakash M.Davda ..Appellant.
V/s.
Smt.Hiralakshmi P. Shah & Anr. ..Respondents.

Mr.Shailesh Shah with P.Tolat i/b. M/s. L.C.Tolat & Co. for appellant.

Mr.Haresh Jagtiani with Anil D'souza, Ms.Vandana Mehta, Hared Kadiani i/b. Anil D' souza for respondents.

CORAM : SWATANTER KUMAR, C.J. &
J.P. DEVADHAR, J.

DATED : 11TH DECEMBER, 2007.

P.C. :

1. Appellant is aggrieved by the order dated 30th October, 2007 passed by the learned Single Judge in Notice of Motion No.3871 of 2007 in Suit No.2889 of 2007 declining interim relief prayed for and the respondents herein having not agreed to continue the statement in regard to maintaining status quo beyond 4 weeks. Challenge to the order of the learned Single Judge is on the ground inter alia and primarily (a) that the order passed by the Magistrate acquitting the appellant of the charges under section 465, 468, 471, 421, 511 r/w. 34 of the Indian Penal Code which was passed on 15th July, 2004

clearly establishes that the documents relied upon by the Appellant in support of his claim before the Court was genuine and he was entitled to the reliefs as claimed; (b) Learned Judge failed to take notice of the subsequent events that the possession of the property in question was given to the appellant subsequent to the passing of the order by the City Civil Court in the year 1998 (15th July, 1998) and the findings recorded in that Suit were inconsequential.

2. In order to examine the import of his contention, it may be necessary to record certain historical facts of this case as parties are in litigation prior to 1998. According to the appellant, an agreement for development was executed in favour of the appellant by the respondents in the appeal on 27th July, 1996 which was subsequently confirmed by Confirmation Deed of 22nd August, 2005. The Confirmation Deed is stated to have been duly registered in accordance with law. Based on this document, the appellant filed the suit for Specific Performance bearing Suit No.2289 of 2007 and in order to protect his interest, appellant took out a Notice of Motion No.3871 of 2007 praying relief of interim injunction restraining the respondents herein from transferring or creating any third party interest in the suit property which is stated to be an open plot namely, Sub-Plot No.62, JVPD Scheme Road No.8 Vile

Parle (West), Mumbai - 400 049; (c) The appellant in fact was and is always ready and willing to perform his part of the contract but the respondents tried to commit breach of the agreement compelling the appellant to institute the present suit.

3. Besides contesting the suit on merits, the respondents herein have also opposed the grant of interim relief on the ground that the documents have been forged and at no point of time, the respondent has ever agreed and entered into the alleged agreement and the appellant himself had disowned the the document at an earlier point of time and the finding recorded by the City Civil Court to that effect had attained finality. The order of the learned Magistrate acquitting the accused / appellant would be of no consequence and the suit of the appellant is based on the false claim and is liable to be rejected. It is further pointed out that the appellant had forcibly entered into the property which compelled the respondents to file a suit under section 6 of the Specific Relief Act seeking restoration of possession. That Suit was registered as Suit No.1649 of 2006. Notice of Motion No.1861 of 2006 was taken out in the said Suit and by his order dated 17th September, 2007 the learned Single Judge has directed restoration of possession of the respondents and the respondents have already taken possession of the suit property. No appeal has been preferred

against the said order.

4. In the light of the above mentioned facts, we have no hesitation in rejecting the contentions raised on behalf of the appellant. Firstly, it is settled principle of law that a finding recorded in a Criminal Court either at the interim stage or at the final hearing are not binding on a Civil Court. Furthermore, in the present case, the finding recorded by the learned Magistrate in the order are not finding on merits. On the contrary, it has been clearly noticed in para 7 of the order that no witnesses were examined and because the prosecution failed to produce any witnesses, the accused were acquitted from the said case. The question of criminal discharge per se cannot be a ground for contemplating Civil rights of the parties particularly when the rights have been adjudicated upon by the Court of Competent Civil jurisdiction. Learned City Civil Court while dealing with the dispute between the parties in S.C. Suit No.427 of 1998 decided on 26th February, 1999 in para 7 of the said order held as under:-

“ It has been understood as to what exactly is the cause of action in the suit. According to the plaintiff, there was a transaction in respect of immovable property and an agreement of development executed by the defendant, the owner of the property in his favour. Thereafter there was also a power of attorney and some correspondence. The plaintiff has thereafter on his own in the application for anticipatory bail has taken a stand that he has been

cheated by one Rohit Shah. According to him Rohit Shah represented to the applicant that the plot in question belongs to his mother in law and represented to him that he should take up the said plot of land for the purpose of development. Rohit Shah introduced the plaintiff to a lady who told him that she was his mother-in-law named Smt.Hiralakshmy P. Shah. According to the plaintiff's advocate he even paid an amount of Rs.1 lakh to that woman and thereafter Rohit Shah disappeared. The plaintiff's advocate also stated that the plaintiff would not have filed the present suit had he known that the documents are forged and would not have attempted to serve the defendant herein. In the application for anticipatory bail it is stated on oath that in this situation the plaintiff realize that the said Rohit Shah had cheated him. The plaintiff learnt that Rohit Shah was in employment of Hiralakshmy (the defendant) and was a sham character. He realized that Rohit Shah has absolutely cheated him. He has further stated that he was totally misguided and cheated by the said Rohit Shah. If that is so then obviously the plaintiff himself disowned the transaction which forms the entire cause of action in the suit. This itself also mean that the plaintiff has tried to pay fraud on the Court itself. This again means that whatever is stated in the plaint about the transaction and the documents which are supposed to have passed any rights to the plaintiff are non est in the eyes of law. They are non est not only in the eyes of law but also in fact. That means that the plaint by itself which is on the basis of such transaction and such averments of rights etc. never disclosed any cause of action. On reading the plaint today while considering this application in the light of all this, it is obvious that what is non est in fact and in law since beginning cannot be something which can give rise to a cause of action. In other words, it can be said that the plaint as read today does not disclose any cause of action.”

5. After noticing the above facts, the learned Court rejected the plaint of the appellant under Order 7 Rule 11 of the

C.P.C. This order admittedly has attained finality and its correctness or otherwise has not been questioned.

6. We may also note that the stand taken by the appellant before the Court now that he was put into possession and thereafter has been illegally dispossessed from the possession is not supported by his own act. The stand taken by the appellant are not only contradictory but are disproved in principle. All material orders passed by the Court of competent jurisdiction have not been questioned by the appellant. Neither the order dated 26/2/1999 was questioned nor the order dated 17/9/2007. Multiplifarious litigations by the appellant is without any justification and to a larger extent is an abuse of process of Court. We refer to the Confirmation Deed dated 22nd August, 2005 is again meaningless inasmuch as the correctness of the same is denied by the respondents and the registration is admittedly unilateral and without the co-operation of the respondents in the present case.

7. Learned Single Judge while taking prima facie view at this stage of the proceedings had declined interim relief to the appellant. It is also pointed out that the document executed are of the year 1996 while the present suit has been filed in the year 2007. The suit if not wholly atleast partly barred on time. It may be hit by the principles of res judicata or constructive res

judicata. Besides all these facts, the learned Single Judge taking overall view of matter for exercising discretion in favour of the appellant found the appellant has not been able to make out prima facie case in his favour. It is settled that in Civil jurisprudence grant of injunction is a discretionary and equitable relief. A person who claims the relief must come with cleans hands. In the present case, the conduct of the appellant has been such which would dis entitle from grant of interim protection by the Court.

8. In view of the above discussions, we see no reason to interfere with the order impugned in the present appeal. Appeal is dismissed. The parties are left to bear their own costs.

CHIEF JUSTICE

J.P.DEVADHAR,

J.